

Charles R. Gibbs (admitted *pro hac vice*)
Sarah Link Schultz (admitted *pro hac vice*)
AKIN GUMP STRAUSS HAUER & FELD LLP
1700 Pacific Avenue, Suite 4100
Dallas, Texas 75201
Telephone: 214.969.2800
Facsimile: 214.969.4343

- and -

Catherine E. Creely
AKIN GUMP STRAUSS HAUER & FELD LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
Telephone: (202) 887-4000
Facsimile: (202) 887-4288

*Attorneys for Golfsmith International, L.P.,
A Delaware Limited Partnership*

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

)	Chapter 11
In re:)	
)	Case No. 08-35653
CIRCUIT CITY STORES, INC.,)	
<u>et al.</u> ,)	Jointly Administered
)	
Debtors.)	
)	

**LIMITED OBJECTION OF GOLFSMITH INTERNATIONAL, L.P.
TO THE DEBTORS' MOTION TO SELL CERTAIN
REAL PROPERTY LOCATED IN SAN JOSE, CALIFORNIA**

COMES NOW Golfsmith International, L.P., a Delaware limited partnership ("Golfsmith"), by counsel, and files this limited objection (the "Objection") to the Amended Motion for Order Under Bankruptcy Code Sections 105, 363, 365 and 503 and Bankruptcy Rules 2002, 6004 and 6006 (A) Authorizing Seller to Enter Into Agreement for Sale of Certain Real Property in San Jose, California Subject to Higher or Otherwise Better Bids, (B) Approving Termination Fee in Connection Therewith, (C) Approving Sale of Real Property Free and Clear

of All Interests, (D) Approving Assumption, Assignment and Sale of Certain Unexpired Lease of Non-residential Real Property Free and Clear of All Interests and (E) Granting Related Relief (the “Motion”) filed by Circuit City Stores West Coast, Inc. (the “Seller,” and collectively with the debtors and debtors in possession in the above-captioned jointly administered cases, the “Debtors”). In support of the Objection, Golfsmith states as follows:

I. JURISDICTION

1. This Court has jurisdiction to consider this Objection pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. BACKGROUND

2. On November 10, 2008 (the “Petition Date”), the Debtors filed their respective petitions for relief under title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

3. On November 12, 2008, pursuant to Bankruptcy Code section 1102, the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the “Committee”).

4. On July 30, 2009, Golfsmith provided written notification to the Seller regarding various issues with the Property constituting violations of Seller’s obligations under the Lease (the “Notice”). A copy of the Notice is attached hereto as **Exhibit A**. During the two months prior to the Notice, Golfsmith repeatedly attempted to contact Sarah Snelson, the individual the Debtors had originally indicated to Golfsmith to be the appropriate business contact for the Property without success. Upon information and belief, Ms. Snelson is no longer employed by the Debtors.

5. On July 31, 2009, the Seller filed the Motion seeking an order authorizing the Seller, *inter alia*, (i) to enter into an agreement with Mathew Zaheri (the “Purchaser”), pursuant to which the Seller has agreed to sell certain real property located in San Jose, California (the “Property”) to the Purchaser, subject to higher or otherwise better proposals; and (ii) to assume and assign a lease, dated as of January 26, 1998 (as amended and modified, the “Lease”), by and between the Seller and Don Sherwood Golf Shop, Inc. (the “Tenant”), to the Purchaser or other successful bidder.¹

III. LIMITED OBJECTION

6. Golfsmith does not *per se* object to the Seller’s proposal to sell the Property and to assume and assign the Lease to the Purchaser or other successful bidder. However, Golfsmith *does* object to any proposal of the Seller to assume and assign the Lease without curing the following continuing Lease violations:

- Pursuant to section 4.B. of the Lease, the Seller is obligated to keep the exterior of the Common Areas² reasonably lighted during hours of darkness that are business hours. The exterior lights in the parking areas of the Common Areas are currently inoperative, causing an extreme safety hazard for the Tenant’s customers and employees.
- Pursuant to section 4.B. of the Lease, the Seller is obligated to keep the Common Areas reasonably free of refuse and obstruction. Due to the excessive amounts of refuse that have accumulated in the Common Areas during the past several months, it has been necessary for Golfsmith to arrange for several additional trash pickups. Attached as **Exhibit B** is an invoice indicating the additional trash pickups for which Golfsmith seeks full and immediate reimbursement.

¹ The Motion amends the motion to sell the property filed by the Debtors on July 28, 2009 [Docket No. 4324] with respect to the Bid Deadline and the date of the Auction (each as defined in the Motion). The Motion does not otherwise change Docket No. 4324.

² Pursuant to section 4.A. of the Lease, the “[Seller] grants [Tenant] and its agents, employees, and customers, a non-exclusive right to use for parking, for ingress and egress . . . and for such other purposes as the same are or may have been designed (i) the parking areas, roadways and driveways provided [on the Property] for the access and parking of vehicles, and (ii) the other public conveniences and amenities as [Tenant] may determine to provide [on the Property] from time to time (the “Common Areas”).

- Pursuant to section 4.B. of the Lease, the Seller is obligated to keep the Common Areas in good repair and condition. In addition to the foregoing Lease violations delineating the accumulation of refuse and lack of exterior lighting, the landscaping in the parking lot of the Common Areas is currently in a state of extreme disrepair, and has been in such disrepair for several months, causing a negative impact on the Tenant's customers and guests.

7. Golfsmith provided written notice of the foregoing violations to the Seller on July 30, 2009. At or immediately following the time of the proposed transfer of the Property, if the foregoing are not remedied, the Debtors will be in default under the Lease. Accordingly, Golfsmith objects to the assumption and assignment of the Lease to the extent that the foregoing Lease violations are not immediately rectified.

IV. WAIVER OF MEMORANDUM OF LAW

8. The legal authority supporting the relief requested by this Objection has been cited herein. Accordingly, Golfsmith respectfully requests that this Court waive the requirement in Rule 9013-1(H)(2) of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia that a response in opposition be accompanied by a memorandum of law.

V. CONCLUSION

In light of the foregoing, Golfsmith respectfully requests that the Court (i) deny the Motion to the extent that the Motion seeks to assume and assign the Lease without immediately rectifying the foregoing Lease violations; and (ii) grant Golfsmith such other and further relief as the Court deems appropriate.

Dated: August 20, 2009.

/s/ Catherine Creely

Catherine E. Creely (Virginia Bar Number: 74796)
AKIN GUMP STRAUSS HAUER & FELD LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
Telephone: (202) 887-4000
Facsimile: (202) 887-4288

-- and --

Charles R. Gibbs (Texas Bar Number: 07846300)
Sarah Link Schultz (Texas Bar Number: 24033047)
AKIN GUMP STRAUSS HAUER & FELD LLP
1700 Pacific Avenue, Suite 4100
Dallas, Texas 75201-4675
Telephone: (214) 969-2800
Facsimile: (214) 969-4343

ATTORNEYS FOR GOLFSMITH INTERNATIONAL,
L.P., A DELAWARE LIMITED PARTNERSHIP

CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2009, a true and accurate copy of the foregoing *Limited Objection of Golfsmith International, L.P. to the Debtors' Motion to Sell Certain Real Property Located in San Jose, California* was electronically filed with the Clerk of the Bankruptcy Court for the Eastern District of Virginia, Richmond Division, using the CM/ECF system, which thereby caused the above to be served electronically on all registered users of the ECF system that have filed notices of appearance in this matter, and mailed, by U.S. Mail, first class, postage prepaid, to all persons listed below.

Circuit City Stores, Inc.
9950 Mayland Drive
Richmond, VA 23233

Dion W. Hayes
McGuire Woods LLP
9000 World Trade Center
101 W. Main St.
Norfolk, VA 23510

Bruce H. Besanko
9950 Mayland Drive
Richmond, VA 23233

W. Clarkson McDow, Jr.
Office of the U.S. Trustee
701 E. Broad St., Suite 4304
Richmond, VA 23219

Robert B. Van Arsdale
Office of the U.S. Trustee
701 East Broad Street, Suite 4304
Richmond, VA 23219

Jeffrey N. Pomerantz
Pachulski Stang Ziehl & Jones, LLP
10100 Santa Monica Blvd., 11th Floor
Los Angeles, CA 90067-4100

Robert J. Feinstein
Pachulski Stang Ziehl & Jones LLP
780 Third Avenue, 36th Floor
New York, NY 10017

Lynn L. Tavenner
Paula S. Beran
Tavenner & Beran, PLC
20 North Eighth Street, 2nd Floor
Richmond, VA 23219

Sarah Link Schultz

Sarah Link Schultz

EXHIBIT A

Beane, Ashley

From: Sanders, Lynn [Lynn.Sanders@Golfsmith.com]
Sent: Thursday, July 30, 2009 3:55 PM
To: Deborah Miller
Cc: Wood, Scott; Stengle, Blane; Gonzalez, Adrian
Subject: Golfsmith San Jose sublease -- issues
Attachments: MetroTech Invoice.pdf; junk1.jpg; junk2.jpg; junk3.jpg; junk4.jpg; Waste Mgmt Invoice.pdf

Deborah,

Since our call a few weeks ago, I have been in contact with several people internally to gather information related to any outstanding issues with this location. Below is a summary of the issues:

1. In March of this year, we had issues with the HVAC that needed to be repaired. Attached is the invoice from MetroTech in the amount of \$1,105.26.
2. We have been having issues for many months with people dumping trash on the property (i.e. couches, treadmills, etc). Our store manager took pictures on 7/21/09, which are attached hereto. It was necessary for us to have 2 extra trash pickups in the month of June to clean up the area. Attached is an invoice from Waste Management indicating the 2 extra pickups in the amount of \$75.00 each, totaling \$150.00
3. We have just learned from one of our corporate employees who visited the site yesterday that the parking lot lights are no longer coming on after dark. Obviously, this is a huge safety issue for anyone (guests & employees).
4. Also, we have been informed that the parking lot landscaping is dying or dead. This causes a negative impact to our guests.
5. Also, we have been informed that there is trash in front of the old Circuit City location along with the trash on the side and the back of the building. This also causes a negative impact to our guests.

Most of these matters, if not all, have been going on for some time without any resolution. It is imperative that we get these issues resolved ASAP. We request that you take the necessary action ASAP or we will start withholding rent. We further request that you refund our out of pocket costs for the HVAC repairs and the extra trash pickup in the amount of \$1,255.26.

We would appreciate it if you would keep us informed as to status of getting each of these issues resolved.

Regards,

Lynn Sanders
Paralegal
Golfsmith International, Inc.
11000 N. IH 35
Austin, TX 78753
Office: (512) 821-4026
Fax: (512) 837-1019
lynn.sanders@golfsmith.com

8/19/2009

EXHIBIT B

PAGE 000027
DATE 07/23/2009
TIME 13:25:10

WASTE MANAGEMENT, INC.
INVOICE DETAIL

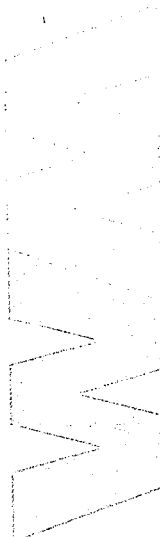
ACCOUNT NAME: GOLFSMITH INTERNATIONAL INC
INVOICE NUMBER: 107583

LOCATION ID/ SERVICE NAME/ SERVICE ADDRESS	SERVICE DATE	ORDER NUMBER	QUANTITY	SERVICE DESCRIPTION	UNIT PRICE	AMOUNT
0045 GOLFSMITH INTERNATIONAL INC 4070 STEVENS CREEK BLVD. SAN JOSE CA 95129	06/02/2009		1.00	EXTRA PICKUP	75.00	75.00
	06/12/2009		1.00	EXTRA PICKUP	75.00	75.00
	06/15/2009		1.00	RECYCLING 1-8.00LY, 2X/WK-6/15/09-07/31/09	124.46	124.46
	07/01/2009		1.00	COMMERCIAL 1-8.00LY, 1X/WK-JUL 2009	169.99	169.99
	07/01/2009		1.00	FRANCHISE FEE	157.96	157.96
	07/01/2009		1.00	COMMERCIAL 8.00LY ADMIN FEE	1.30	1.30
	07/01/2009		1.00	MANAGEMENT FEE	35.00	35.00
	07/01/2009		1.00	RECYCLING 1-8.00LY, 2X/WK-JUL SERVICE INCREAS	89.63	89.63
	07/01/2009			FUEL SURCHARGE		75.29
				TOTAL CURRENT LOCATION CHARGES		803.63

CA-ALLIED WASTE SERVICES - ALL 408 432-1234
2355 70110045

0045 - SUB-TOTAL

803.63



WASTE MANAGEMENT